the purchase or acquisition by exchange or otherwise, of securities in my behalf, hereby granting unto my said attorney full power and authority in the premises, ratifying and confirming all that he shall do or cause to be done by virtue hereof.

Very truly yours,

FRITZ v. OPEL

Plaintiff's Exhibit 71

MEMORANDUM November 17, 1931

Miss Cantrell
Remittance Department.

I recently gave you instructions to prepare principal statements of the Fritz von Opel Account in triplicate. Will you please note the following amended instructions:

> Statements of the principal account of Fritz von Opel's Main Account are to be prepared in duplicate only, originals going to Mr. Fritz von Opel and duplicates to Mr. Wilhelm von Opel. The triplicate copy of this statement will not be sent to Messrs. Bayer & Clauson, as I had previously instructed.

We have opened another account, however, called "Fritz von Opel Special Account, re: General Motors Stocks" and it is this account that I wish statements made up on in triplicate at the same time as all the other statements are made. Originals of this statement are to go to Mr. Fritz von Opel, duplicates to Mr. Wilhelm von Opel and triplicates to Messrs. Bayer & Clauson.

Please note that the instructions given apply only to the principal statements and do not affect instructions on the Income Statements which were previously given to you.

/s/ B. D. SHAPIRO
B. D. Shapiro
Custodian Administration

BDS/GB

Plaintiff's Exhibit 72

May 31, 1932

City Bank Farmers Trust Company,
22 William Street,
New York, N. Y.

Gentlemen:

I hereby direct you to transfer to a custodian account which you will open in the name of Ueberseeische Finanz Korporation, Ltd., all the cash and securities now held by you in my main principal and income account, with the exception of 47,625 shares General Motors Corporation stock which is to remain in my account subject to my further instructions.

My special income account will remain open and is not to be transferred.

Very truly yours,

/s/ FRITZ VON OPEL

Plaintiff's Exhibit 73

(LETTERHEAD OF OVERSEAS FINANCE CORPORATION LIMITED)

Zurich den May 9th, 1932.

City Bank Farmers Trust Company,
22, William Street,
New York City.

Gentlemen:

We hereby request you to open an account in our name. As per attached Power of Attorney, Mr. Fritz von Opel is authorized to handle this account.

Very truly yours,

OVERSEAS FINANCE CORPORATION LIMITED.
(Signatures Illegible)

Legalization

Seen for legalization of the above two signatures of Messrs. dr. JOSEF HENGGELER, advocate at Zurich and dr. HANNS FRANKENBERG, banker residing at Zurich 7, acting as counsels of administration of the OVERSEAS FINANCE CORPORATION LIMITED at Zurich with the right to sign valid in law for the said corporation.

Zurich, the 11th May 1932.

Notariat Zürich (Altstadt)
(Signature Illegible)

tax: frs. 4.–
Nos. 3585/6.

Plaintiff's Exhibit 74

(Letterhead of Overseas Finance Corporation Limited)

POWER OF ATTORNEY

Gentlemen:

We hereby authorize and request you to follow any and all written instructions, given you by Mr. FRITZ VON OPEL in respect to the sale or exchange of any or all of the securities which you, as Custodian or otherwise, now or in the future may hold for our account, the transfer, delivery or other disposition of said securities, the investment or other disposition of any cash which you, as custodian or otherwise, may at any time hold for our account, and the purchase or acquisition by exchange or otherwise, of securities in our behalf, hereby granting unto our said attorney full power and authority in the premises, ratifying and confirming all that he shall do or cause to be done by virtue hereof.

Very truly yours,

OVERSEAS FINANCE CORPORATION LIMITED
(Signed) Illegible

Zurich, May 9th 1932.

Seen for legalization of the above two signatures of Messrs. dr. JOSEPH HENGGELER, advocate at Zurich and dr. HANNS FRANKENBERG, banker residing at Zurich 7, acting as counsels of administration of the OVERSEAS FINANCE CORPORATION LIMITED at ZURICH with the right to sign valid in law for the said corporation.

Notariat Zürich (Altstadt)
(Signed) Illegible

ZURICH, the 11th May 1932.

tax: fr. 4.—
No: 3582/3.

(NOTARIAL SEAL)

Plaintiff's Exhibit 75

(*Stamp*)
FILED
Oct. 5 1948
HARRY M. HULL, Clerk

May 31, 1932.

City Bank Farmers Trust Company,
22 William Street,
New York, N.Y.

Gentlemen:

We hand you herewith a form duly executed setting forth the instructions by which you are to be guided in operating our custodian account with you.

We have already filed with you properly legalized documents showing the names of the officers authorized to sign against this account and a power of attorney issued in the favor of Mr. Fritz von Opel. We understand you wish further properly legalized documents showing the authority of the officers to delegate their powers as they have done in said power of attorney and these will be furnished you in due course. In the meantime we have requested Credit

Suisse, Zurich, to confirm to you that the officers have such powers. We understand this confirmation is now in your hands and that you are willing to recognize Mr. von Opel's authority as set forth in said power of attorney for a temporary period, that is, for such reasonable length of time as may be necessary for us to furnish you with supporting documents.

With reference to the income collected by you for our account, you are hereby directed to credit 20% thereof to the special income account of Mr. Fritz von Opel. The amount so credited to the special account is to cover management expenses incurred by Mr. von Opel.

Very truly yours,

UEBERSEEISCHE FINANZ KORPORATION, LTD.

By: (Signed) FRITZ v. OPEL, Atty.

Plaintiff's Exhibit 76

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26453.

UEBERSEE FINANZ-KORPORATION, A. G.,

Plaintiff,

v.

TOM C. CLARK, Attorney General, As Successor to the Alien Property Custodian,

Defendant.

STIPULATION

IT IS HEREBY STIPULATED between the parties that Mr. Adolf Gaeng, Wunderlistr. 8, Zurich 37, Switzerland, if

called as a witness for the Plaintiff, would testify as follows:

1. That on October 19, 1948, he forwarded to the offices of Gallagher, Osherman, Connor and Butler, Bowen Building, Washington, D. C., all the existing books, files and papers of the Uebersee Finanz-Korporation, which were kept in the regular course of business and which cover the years January 1, 1937 through December 31, 1942, and that there are no other books of said corporation covering this period of time;

2. That these books, files and papers are more specifically identified by the descriptions contained in the attached memorandum which was an enclosure with his letter of October 19, 1948;

3. IT IS FURTHER STIPULATED between the parties that said books, files and papers described in the attached memorandum were received at the offices of Gallagher, Osherman, Connor and Butler, Bowen Building, Washington, D. C., and the same have been made available to Counsel for the Defendant pursuant to the Order of the United States District Court of the District of Columbia under date of October 5, 1948.

4. IT IS FURTHER STIPULATED that the testimony of Mr. Adolf Gaeng may be dispensed with upon the trial of this action, and that this stipulation may be offered in evidence or used by either party in lieu of such testimony.

(Translated from a photostat of the German original)

1/S7534

Declaration of Incorporation

In pursuance of the above articles of incorporation I acting as sole incorporator herewith establish the

Frima Trust Establishment with domicile in Vaduz and within the terms of Article 2 of the Articles of Incorporation I assigned it:

Francs 20,000 (Francs twenty thousand) in cash.

As Board of Management I appoint:

Mr. Ad. Gaeng, Auditor, Zurich, who is authorized to sign on behalf of the company.

The assets assigned to the fund have been made available to it in full and are being credited to its account with Adler & Company, A. G., Zurich.

Vaduz, September 5, 1934.

The Administrator Officer will sign as follows:

Frima Verwaltungsanstalt

Frima Etablissement de Gestion

Frima Trust Establishment

(signature) Ad. Gaeng

I herewith certify to the genuineness of the above signature which was acknowledged in my presence by Adolf Gaeng, Auditor residing at Rosengartenstrasse 59 in Zurich 10, who identified himself by presenting his passport.

Zurich 6, September 10, 1934.
Control No. 1245
Francs 2.00 Official Fee.

Notarial Offices
Unterstrasse Zurich
(Signature illegible)
Notary

(Official Seal)

(Translated from a photostat of the German original)

I/G7584

Articles of Incorporation

of

Frima Verwaltungsanstalt

Etablissement de Gestion Frima

Frima Trust Establishement

1. There exists under the name of Frima Verwaltungsanstalt, Etablissement de Gestion Frima, Frima Trust Establishement with domicile in Vaduz, an establishment within the terms of Articles 534 *et seq.* of the Liechtenstein Civil Code for the purposes of managing the assets of the establishment and to use them in accordance with the Articles of Incorporation and for the purpose of conducting commercial transactions.

2. The capital of the establishment consists of Francs 20,000 which upon its incorporation are assigned to the establishment in cash. Further increments to the capital may be made at any time.

3. The establishment and its profits, if any, belong to the beneficiaries to be designated by the incorporator either generally or for any particular instance. The beneficiaries thus designated are authorized to reassign their rights to others. Designation of the original beneficiaries and their assignees may be made irrevocably or revocably.

4. The establishment shall be managed by a Board of Management which is composed of one to five individuals or corporate bodies. The Board of Management shall be designated by the incorporator. Subsequently, it shall be

self perpetuating; successors may be appointed by the several members during their own tenure to become effective upon termination of their own offices.

5. Notwithstanding these provisions, the beneficiaries shall at any time have the right to appoint or discharge the members of the Board of Management. The appointments made pursuant to Article 4 shall therefore be valid only as long as the beneficiaries do not make contrary decisions. If there shall be several beneficiaries, a majority of them shall be required for discharging a member of the Board of Management. A decision may be arrived at by a meeting called for such purpose or by signing a proposal in writing to that effect circulated among the beneficiaries.

6. The Board of Management determines the manner in which the signature of the establishment are executed. Those authorized to sign add their own name to that of the style of the establishment.

The Board of Management may appoint an auditing agency.

7. The balance sheet shall be drawn up in accordance with established business principles. At the discretion of the Board of Management, a surplus may either be distributed among the beneficiaries or retained in some form, such as reserves.

8. Amendments of the present Articles of Incorporation shall be made only with the consent of the Board of Management and the beneficiaries. The beneficiaries are herewith designated as the supreme agency (organ) of the company.

9. Notices, if any, of the establishment shall be given by a registered letter to the beneficiaries; if a public notice

shall be required, publication shall be made by one or two newspapers published in Liechtenstein.

Vaduz, September 5, 1934

(Signature) Ad. Gaeng

(Translated from a photostat of the German original)

I/88534

Designation of Beneficiaries

In accordance with Article 3 of the Articles of Incorporation of the Firm

F r i m a Trust Establishment, Vaduz

registered in Vaduz, the incorporator of the establishment in his capacity as such is authorized to designate the beneficiaries.

I herewith irrevocably designate as beneficiary;

Mr. Fritz von Opel, Graduate Engineer, Briarcliff (New York), giving him expressly the authority to re-assign his right at any time revocably or irrevocably, wholly or in part.

At the same time I assign in the same manner all rights vested in the incorporator by law to Mr. Fritz von Opel.

Zurich, September, 1934

(Signature) Ad. Gaeng

I herewith certify to the genuineness of the above signature which was acknowledged in my presence by Adolf

Gaeng, Auditor, residing at Rosengartenstrasse 59 Zurich 10, who identified himself by presenting his passport.

Zurich 6, September 10, 1934
Control No. 1246
Francs 2.00 Official Fee.

Notarial Offices
Unterstrasse Zurich
(Signature illegible)
Notary

(Official Seal)

Plaintiff's Exhibit 78

SCHWEIZERISCHE BANKGESELLSCHAFT

Union Bank of Switzerland

Board of Directors

Zurich June 25, 1936

FRIMA FIRST ESTABLISHMENT—

VADUZ

You refer to the agreement made between you and us on June 19, 1936 and we are honored to tell you that we have executed your order and sold—

97 Shares OVERSEAS FINANCE CORPORATION, Zurich
Par Value 5,000

for a price of U. S. Dollars 1,666.66 per share under the following agreement said before hand to the following:

Buyers	Number	Value
Herrn Direktor C. Buhler, Zurich	6	$ 9,999.96
Adler & Co. A-G., Banquiers, Zurich	9	14,999.94
Credit Industrial, Clarus	5	8,333.30
Herrn Direktor H. Gruebler, Zurich	9	14,999.94

Bank in Winterthur, Winterthur	8	13,333.28
Herrn Direktor M. Zimmermann, Zurich	6	9,999.96
" " F. Zehnder, Zurich	7	11,666.62
" " F. Richner, Zollikon	4	6,666.64
" A. Lang, Zurich	2	3,333.32
" Direktor E. Baechi, Zurich	6	9,999.96
" " P. Jaberg, Zurich	7	11,666.62
" Dr. H. Weiss, Zollikon	5	8,333.30
" Dr. L. Birchler, Zollikon	4	6,666.64
" G. A. Keller, Zurich	4	6,666.64
" Dr. A. Schaefer, Zurich	6	9,999.96
" Direktor Dr. E. Lang, Baden	5	8,333.30
" Hans Keller, Ober-Engstringen	4	6,666.64
Total	97	161,666.02

This total amount has been credited to your value June 30, 1936 on a new U. S. dollar account that we have opened under your name on our books. We reserve for us the right to charge you later for the Federal and State Sales Tax on the sale of these shares.

It is understood that the amount as said above will be blocked temporarily following the agreement made between you and us on June 19 of this year and that it is pledged for our claims until a definite new agreement has been made in accordance with the Supplement B of the agreement as said before hand.

Sincerely,

UNION BANK OF SWITZERLAND

(Two Signatures)

Plaintiff's Exhibit 79

Adler and Company, Bankers, Inc.

Zurich 1,
St. Peter Street 16
Post Office Box 22

STATEMENT

We notify herewith that we received from *Frima Trust Establishment, Vaduz*

on May 30, 1936

97 shares of Overseas Finance Corporation, Ltd. in deposit. These shares have been delivered to the Union Bank, of Switzerland on June 22, 1936. The same bank give us the shares back on November 4, 1941 and since that time they have been on deposit without interruption for the account of Frima Trust Establishment, Vaduz.

Adler and Company, Inc.

Dr. E. Meier

Dr. Ludwig Schwager

Legalization of text and signature follows by Public Notary Office of Zurich by the chancery of the State of Zurich by the Public Notary Carl Steidel, by the Chancery of the State of Aargau and by the Consulate General of the United States of America in Zurich (Eugene W. Nabel, Consul of the United States) October 28, 1948.

Plaintiff's Exhibit 80

Adler & Company
Zurich

Deposit Statement

Frima Trust Establishment *Vaduz*

Shares Overseas Finance Corporation, Ltd., Zurich

May 30, 1936 — 97 shares placed in deposit

June 22, 1936 — *97 shares* passed over to Union Bank of Switzerland

November 4, 1941 — 97 shares back in deposit from Union Bank of Switzerland, Zurich

---

October 19, 1948

Adler & Company, Inc.

Dr. E. Meier

L. Schwager

Legalizations follow of text and of the signature by Public Notary Office of Zurich Oldtown and by the Public Notary of Baden.

COPY

Notification of departure

Pltfs.' #83

The persons named below departed on december 12, 1929 from Wiesbaden, Erardstr. 5 to Detroit Hotel Book Cadillac U.S.A.

number	family name of departing for married women also maiden name	christian name person underline the calling name	profession	date of birth	place of birth	nationality	religion	single married widowed divorced separated	duration of residence	last tax assessment office place
	von Opel	*Fritz* Adam, Hermann	dipl. ing.	may 4, 1899	Rüsselsheim	Hessen	prot.	married	appr. 1-1/2	Mainz
	von Opel	Margot	Ehefrau (wife)	jan. 17, 1903	Potsdam	Hessen	prot.	married	appr. 5	Wiesbaden

stamp: 4th. police district
dec. 19, 1929
Wiesbaden

(Entry-stamp of police district)

Fritz von Opel
Margot von Opel geb. Löwenstein

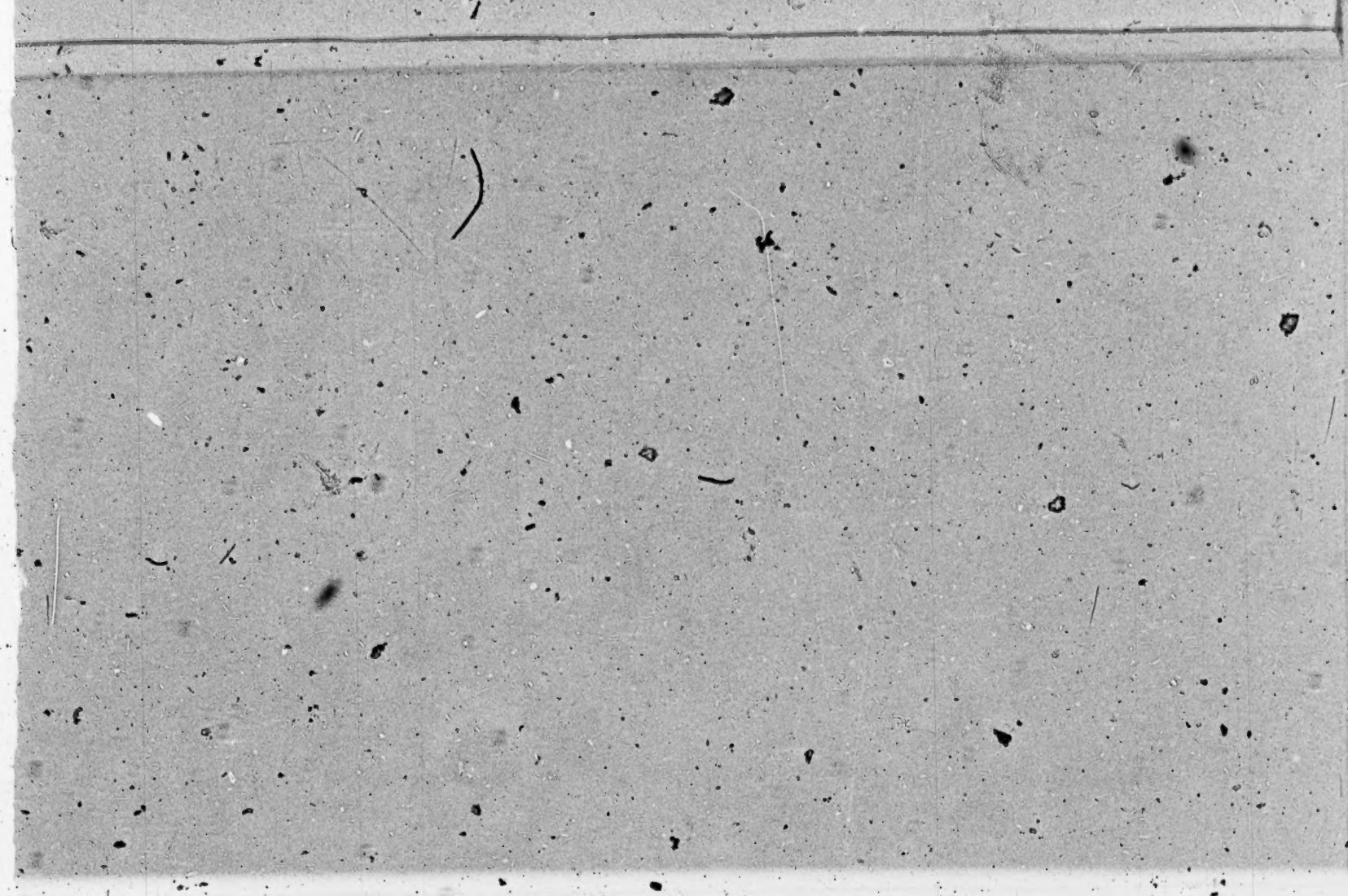
Name and profession of the person in charge to give notification

(stamps and seal)

seal
The over-mayor of
Wiesbaden,
police president
first police
district

The undersigned secretary certifies that this copy is correct as to the words and to the figures
Wiesbaden, nov. 9, 1948
first police district
Rupp
police secretary

1884
Plaintiff's Exhibit 83



Plaintiff's Exhibit 90

TRANSDANUBIA BAUXIT R. T. Budapest
TRANSDANUBIA BAUXIT A. G. March 12, 1941

Dear Mr. von Opel:

In the following we would like to give you a short outline of the most recent happenings:

Up to August 1940 we could not begin deliveries for reasons beyond our control. The settlement of the Koranye matters took up a long time and after they had been finished we had no means of transportation at our disposal and we were unable to obtain mine workers on account of the general lack of workers. Finally, in August, we had overcome all difficulties and began deliveries. Immediately after the beginning of deliveries it was visible that the mineral taken from the Edgar mine was of excellent quality; that, however, by means of surface production only little mineral could be produced. As in the meantime considerable increase in wages, transportation fees, and supply prices had happened and as we saw that it was inevitable to go over to the more expensive deep mining, we tried urgently to get into contact with Giulini to obtain a change of prices and stipulations of quality. For a long time we did not receive any answer from Giulini but we continued delivery. We also continued some test drilling in the Edgar mine and through them we found, at depths of 21 to 23 meters, extensive mineral beds of excellent quality. We enclose the respective technical report, which also describes the chances of exportation.

At the end of October, Dr. Edgar Giulini, Director Frick, and an engineer of the firm came to Budapest. Dr. Timar was doing military service during the entire fall and for this reason Engineer Krausz negotiated with these gentlemen. He described to them the situation and explained to

them that the Hungarian National Bank was not going to permit the exportation of bauxite under the originally stipulated conditions on account of the rise in prices which had taken place in the meantime. Giulini, in the beginning, did not want to agree to a change of conditions but, as the National Bank had made known to them that it would not permit exportation under the original conditions, they finally declared their readiness to negotiate new prices and terms. (Terms omitted.)

Thereafter, Giulinis inspected the mine, together with Engineer Krausz; they expressed their satisfaction about all they had seen and they were delighted about the quantity as well as the quality of the mineral to be expected. Already, during the course of the negotiations, we had told them that the beginning of deep mining made investments necessary and we asked them to put at our disposal amounts necessary for the investments, either in the form of an advance or in the form of a loan, because under the present circumstances it was difficult for us to turn to you. Upon our return from the mine to Budapest, Giulinis informed us that the German Foreign Funds Control would not permit either an advance or a loan and that for this reason they would report to you about the inspection and that they would request you to put up the capital necessary for the investments.

A short time thereafter, we were forced to stop production because it would have been necessary to begin deep mining, for which the necessary means were not and are not at our disposal. Since for half a year we can only communicate with you by means of wires and it appears that in this way we would not succeed in convincing you that the beginning of deep mining is absolutely necessary and the sole profitable solution, because exact scientific tests have shown beyond doubt that the mineral is there, and as the contract is in our hands as the prices can be raised with the assistance of the National Bank, according to market prices and

the general situation, all requisites are there for considerable success of our enterprise. Had the necessary capital been at our disposal already three to four months ago we, to our best belief, could have already delivered considerable quantities. Instead, however, we passed the entire winter waiting; our general expenses remained unchanged; we had to carry the public fees undiminishedly, and for this reason it is self-evident that the future of our corporation without productive work can only result in continued heavy losses.

Based upon the telegraphic authorization from you, we began to negotiate with various parties for the purpose of selling or leasing the mine. Taken altogether, we can say about these negotiations the following:

A loan can only be obtained if the creditor, in addition to interest, is given a considerable share of the profits. We are faced with outright fantastic demands which make the solution absolutely not profitable. It is self-evident that the situation would be quite different if we could obtain a guarantee through your Swiss banking connection. In such a case we could obtain a loan at bank terms.

We also obtained an offer for sale in the amount of 280,000 to 300,000 pengo. All interested parties, however, were only inclined to purchase the interest of Transdanubia if Giulinis would be willing to give up their part. Giulinis were not disinclined to accept such a solution, but as the purchasers wished to have a general release in regard to lawsuits and public fees, Giulinis refused to accept these terms because, according to Dr. Ballays' information, their relation with Koranye is not settled. Therefore, only one solution is left—merely to lease the mine in agreement with Giulinis in such a way that the new lessee takes over the stipulated deliveries for Giulini and that they at the same time state to us that they would not raise against us any claims based upon our breaking of the delivery contract. We succeeded, finally, in finding a noble aristocrat who is willing to lease the mine, but he does not want to pay us

more than 1.60 pengo per ton. This would be a very unfavorable solution because in the three years of the lease contract nearly no profit would be left, whereas the lessor in the meantime would take out and deliver from the Edgar mine considerable quantities.

Unfortunately, the prices of all supplies for deep mining have in recent times considerably risen so that, including the general expenses and public fees which accrued in the meantime, 55,000 to 60,000 pengos would be necessary for the beginning of the enterprise. This amount we figured based upon careful—even pessimistic—calculations and we believe that with this amount the production could be really put into such state that premiums would be guaranteed and that not only the invested amount, but in addition, considerable sums could be earned. (List of supplies follows.)

This is how matters stand. In our opinion, only one possible profitable and reasonable solution is existent—namely, by making the necessary investments for the beginning of deep mining and to start deliveries as soon as possible. It cannot be overlooked that we did not fulfill our delivery contract with Giulinis and although we have in this respect many excuses, we must nevertheless face the possibility that if further deliveries happen in the matter Giulinis will revoke the contract and start against us a lawsuit for damages as they are not obliged to share in our investments. Instead of productive work, we would have a long drawn-out and expensive lawsuit which, even if we won, would stop the production because we cannot hope to use the mines under Giulinis' consent during a lawsuit with them.

With the mining facilities all judicial matters are settled and the authorities during the last months were really very helpful in every respect. Also, production went along nicely, payments for the produced mineral were made without difficulties against documents and all hope was there that the enterprise would develop normally and even begin to bloom.

It would be really sad if we would be forced right now to leave the sure profits to third parties.

For this reason we beg you very much to revise your position and to make it possible to maintain the enterprise out of own means. From this letter and enclosures you will see that all conditions are fulfilled to meet the contracts and to let bloom the enterprise. Should you, however, in spite of the above, remain upon the stand taken, namely, not to put at our disposal the amounts necessary for the investments, in this case please permit that we, if worse comes to worst, enter into the above-mentioned lease agreement.

Time presses. The public fees must be paid and general expenses exist to a certain degree. On the other side, we had for months no income whatsoever. Every day which we delay production and delivery means a loss irrespective of the fact that we have no money at all at our disposal to bear the public fees for any length of time. For this reason we ask you to let us know your decision as soon as possible—a decision which we hope will be favorable for the enterprise.

With greatest respect,

TRANSDANUBIA BAUXIT

/s/ KRAUSZ
/s/ DR. TIMAR

Plaintiff's Exhibit 91

(Draft of Telegram)

Timar Balory—utca 5 Budapest

Transdanubia

Letter received. Try to make deal with more competent party under approval by Giulini and on Terragun basis. Cable details before closing.

Opel

Plaintiff's Exhibit 92

(Cablegram)

JE64 RADNYP61 102 WIRELESS VIA MACKAY
RADIO=BUDAPEST 27 1239

NLT OPEL=
244 ARABIANROAD WESTPALMBEACH
FLORIDA= 1941 MAY 27 PM 4 10

TWO POSSIBILITIES FOR SOLUTION ARE OFFERED FIRST COUNT HADIK WILLING TO LEASE MINES FOR FIVE YEARS RENT ONE PENGOES TWENTYFIVE PER TON MAKES ALL INVESTMENTS AND TAKES OVER CONTRACT GIULINI WILL START WITH WORKS AT LATEST TENTH JUNE STOP SECOND WE COULD RAISE A LOAN OF FORTY THOUSAND PENGOES FOR THREE YEARS AT SIX PERCENT STOP GIULINIS FEELING INCLINED TO GIVE AMNESTY FOR THE FAILURE OF DELIVERY IF WE START WITH IT UNTIL FIFTEENTH JULY STOP WE SHALL DO OUR BEST IN ORDER TO CHOOSE THE MOST ADVANTAGEOUS FORM SHOULD FEEL OBLIGED TO HEAR YOUR OPINION=

TRANSDANUBI BAUXIT.

OPEL 244 GIULINI GIULINIS AMNESTY
TRANSDANUBI BAUXIT.

Plaintiff's Exhibit 93

Suggest you accept Hadik offer. He ought to guarantee 40 to 50 thousand tons per year or if lesser guaranteed terragun should be higher.

Suggest accepting Hadik offer provided Giuline agrees to our terragun safeguarded. Hadik ought to guarantee around 40 thousand tons yearly. Try to raise terragun or get a top percentage of profit.

OPEL

Plaintiff's Exhibit 96

Dr. D. Gros
Rechtsanwalt

Berlin-Columbushaus, July 27, 1935.

THE DEED OF GIFT OF OCTOBER 5, 1931.

A critical evaluation of the provisions of the deed of gift leads me to distinguish three groups of agreements namely:

1. The gift;
2. The usufruct;
3. The advancement.

I.

The gift.

In the provisions relating to the gift—these are paragraphs 1 to 4, and 10—distinction must again be made between:

(a) the gift (paragraphs 1-4) and

(b) the "reversion" of the gift (paragraph 10).

Re (a): In making the gift, distinction must again be made between the in personam agreement (the gift promise) and the execution of the gift.

A written gift promise is void according to law. But the lack of formality of the gift promise is remedied by the proper execution of the gift. The deed of gift contains a so-called "cash gift", i.e. a gift in which the promise and the act of donation coincide. In this case the proper execution of the gift, i.e. in this case the transfer of the title is decisive for the validity of this act. The transfer of title is generally effected by "delivery of possession", to the donee the actual power of disposal. However, since the shares in question (p. 2) were deposited in a bank, the delivery was to be replaced, as provided by law specifically for such cases, by the assignment of the claim against the bank for delivery of the shares in accordance with the contract of deposit or bailment. This was done by the provision of paragraph 4 of the deed. Thus, what we have before us is a proper transfer of title, hence a perfectly valid gift.

Re (b): The last paragraph of the contract provides that under certain circumstances, the gift which was executed is to become "void", and that the shares or their substitutes including the unused income are to "revert" to the parents. It was evidently the intent of the contracting parties that these provisions should secure an automatic reversion of the property of the parents. But this effect could have been attained only if the title itself had been transferred conditionally, namely on the "condition subsequent" of the event contemplated in paragraph 10. Legal texts and the decisions, are unanimous in maintaining that the transfer of title on a condition subsequent is permitted and that it has

the effect of an automatic reversion in the event that the condition should occur. It appears doubtful, however, whether the contract may be interpreted liberally to provide that it was the intent of the contradicting parties to make the transfer of the title dependent upon the condition subsequent of the event contemplated in paragraph 10. In my opinion a reasonable interpretation of the contract would lead to this conclusion. It must, however, be remembered that much will depend, in case of dispute, on whether the court takes a formalistic approach or not.

But the fact remains that the subject of the gift—the shares—have been sold, and that with the proceeds of this sale, other assets have been purchased. Paragraph 10 takes this fact into consideration (p. 3) by extending the "reversion" clause of the contract to the "substituted values including the unused income". This provision, however, is undoubtedly imperative to transfer title, since the law of personal and real property which is governed by the publicity principle, calls for unambiguous, clearly defined conditions, because the provisions of the law of real and personal property governing the transfer do not only the legal relations between the contracting parties, but also those of any third party. It must, therefore, be emphasized that the parents in no case reacquire directly the substituted values including the unused income, if the event discussed in paragraph 10 should occur.

An interpretation which takes due consideration of the intent of the contracting parties, must of necessity come to an interpretation of paragraph 10 (so-called supplementing interpretation) which would permit the parents in the case provided for in this paragraph to demand, that the substituted values including the unused income be transferred to them. It is to be noted, however, that the parents do not acquire the title automatically, but that they merely obtain a so-called in personam claim to the transfer of the title. Hence, they will not obtain the title until the prop-

erty assets are assigned to them by special transfers in accordance with the law of personal and real property. It is, of course, a great difference whether the title will revert automatically, or whether there is merely a claim for transfer of title which represents an inferior legal position. An example from the law of bankruptcy may serve to illustrate the practical consequences. There the owner has a right in rem for the delivery of his property, the unsecured claimant, however, must be satisfied with receiving his mere pro rata share as an unsecured creditor.

II.

The usufruct.

The provision regarding the creation of the usufruct was intended to provide as a precaution (p. 4) for the parents. This in rem security has not been achieved, however, for the usufruct as stipulated, is not valid.

The creation of a valid usufruct, according to law, presupposes that the res in which the usufruct is to be created is "delivered" to the usufructuary, or, if the res is deposited with a third party, the actual "delivery" is substituted—as in the case of the transfer of title—by the assignment of the claim to have the res delivered on the strength of the deposit or bailment contract. While this has been taken account of in the deed of gift by the provision of paragraph 4, the inclusion of a corresponding clause regarding the creation of the usufruct has been overlooked. It should have therefore been stipulated that the son, for the purpose of creating the usufruct, in turn reassign to the parents, after the transfer of title, the claim to the delivery of the shares which had been assigned to him according to paragraph 4 (which was necessary in order to effect the transfer of the title). Only thus would a valid usufruct have been created. But more than that: even if a valid

usufruct had been created, the in rem security thus achieved would have been lost by the sale of the shares. To be sure, the contracting parties have anticipated this case and tried to meet it in the contract by simply providing that the usufruct was to include the substituted assets as well. But this agreement is no doubt also invalid, because the requirement of defining it particularly the res in question which is essential in all transactions affecting title is lacking. Therefore in conclusion it must be stated that the parents have not achieved the intended position as usufructuaries.

Nevertheless, one might ask whether the contract may not be interpreted to imply that the parents have the right, at any rate (p. 5) to demand the subsequent establishment of a valid usufruct. In my opinion, such an interpretation would be entirely correct, since it takes due account of the intent of the contracting parties which was clearly expressed by the provisions of the contract.

It must, however, be noted that it makes a great difference whether the parents have the in rem security of a usufruct or only a so-called in personam claim to the creation of a usufruct. If the parents are usufructuaries they have immediate title to the income. If, on the other hand, they have only an in personam claim to the creation of a usufruct, then the income accrues directly to the son.

This legal situation is of great importance not only from the point of view of private law, but also of almost decisive consequences as regards the provisions of the foreign exchange law. If a valid usufruct was created, the parents have immediate title to the income and are, therefore, obliged to report and to deliver the foreign exchange which has automatically accrued to them. In this connection it must be remembered that the duty to convert foreign exchange cannot be rendered nugatory by a subsequent waiver by the parents of the automatically accrued income, for

even a waiver is a "Transfer" within the meaning of the foreign exchange regulations, requiring a specific license. These results flowing from the provisions of the law concerning foreign exchange control were evidently not taken into consideration when the contract was concluded.

But since a valid usufruct has not been created and hence immediate title to the income does not accrue to the parents, no legal obligation to report and to deliver arises, under the provisions of the foreign exchange control law, for no foreign exchange accrues automatically. For this reason, no penalty should have been imposed for a violation of the provisions governing foreign exchange control with respect to the income from the usufruct, since (p. 6) no valid usufruct exists at all, and therefore a legal basis for conclusions grounded on foreign exchange control law is lacking. (As early as last year, on the occasion of the discussions on the foreign exchange case, the undersigned set forth these principles of private law, but was unable in the general excitement of those days, to get any attention to these legal considerations which require a rigid concentration of mind and are very difficult to understand for a layman; he therefore did not get a chance to present these arguments to the legal experts of the ministries). The mere in personam claim to the creation of a usufruct, the only thing that exists, is entirely irrelevant within the meaning of the foreign exchange law, since it does not constitute a claim within the terms of its provisions.

If it is thus established that the income accrues directly to the son, a further question is presented, regarding the existing rights during the period in which the parents do not insist on stipulating a usufruct with in rem validity. It must be assumed that by way of interpretation, one would arrive at the conclusion that the parents should have a claim arising from unjust enrichment on the ground that it was evidently the intention of the contracting parties

that the parents were to get the income less 20%. This claim arising from unjust enrichment further includes a claim to information and to an accounting, for without this ancillary claim the parents would have no means of enforcing their claim for payment based on unjust enrichment.

III.

The Advancement.

The validity of the provisions pertaining hereto (paragraphs 6, 7, 8 and 9) is free from doubt since they merely establish in personam claims. It follows that the duty to account for the advancement, can validly include the substituted assets and the unused income (p. 7).

Now, these provisions stipulate that when the advancement is accounted for, the value of the shares or their substitutes including the income not used as of the date of the accounting for the advancement shall be used. This provision makes it necessary that in the event when the time for accounting has arrived, comprehensive information must be given and accounts rendered by the son; in addition, an evaluation or estimate with respect to the assets involved in the accounting must be made, which may prove very difficult.

This stipulation may be changed against the will of the son only by a testamentary act of the father which would encumber the son with an advancement in favor of the daughter. If the son consents, however, it can be changed simply by a supplementary agreement amending the deed of gift.

If it is to be the purpose of such an agreement to eliminate the difficulties which will arise in the event of an accounting, then it would be advisable to fix the value of the advancement in a definite account now. Difficulties

would arise solely in connection with the usufruct problem. Things are simplified, however, if the parents waive the subsequent establishment of a valid usufruct. I presume that this will be the case, if for no other reason than the results flowing from the provisions the foreign exchange control law. If, thus a lien for the parents is eliminated, the question arises whether it would not be advisable to stipulate in personam obligations which establish a duty of the son to make contributions to his parents in the event of need. In my opinion, such an agreement would be rather ineffective as a practical means of securing such a claim. Moreover, it must be remembered, that the son is already required by law to support his parents i.e. by reason of the provisions of the law regarding the obligation of maintenance, which give the parents, in case of need, automatic claim against their son to maintain them in keeping with their social station (p. 8). Aside from this, the parents would, according to the provisions of law concerning gifts, have a legal claim to the return of the gift within ten years from the date of the gift, if they become unable to support themselves in keeping with their social station. In this connection it may be mentioned that the son may avert this claim for the return of the gift by paying for the maintenance of his parents in keeping with their social station.

If the value of the gift is fixed at a definite amount which is to be used as basis for the settlement, then the son would have to carry the economic risk. It would then be logical not to increase the advancement by the amount of the unused income from the usufruct, but rather to stipulate that the value at which the gift which is to be settled be reduced by the sum total of payments which may have been made by the son since the gift was made.

A draft of the proposed amendment of the deed of gift is attached.

(sgd.) D. Gros
Attorney-at-law

Plaintiff's Exhibit 97

(Translated from a photostatic copy of a carbon copy of the German original)

Dr. D. Gros
Attorney-at-law

Berlin, Columbushaus, October 8, 1935
W 9, Potsdamer-Platz 1

An den Herrn
Praesidenten des Landesfinanzamts Wiesbaden,
(Devisenstelle)

In the deed of gift of October 5, 1931, Geheimer Kommerzienrat Dr. Wilhelm von Opel and his wife Marta, nee Bade, transferred to their son Fritz von Opel 6 million shares nominal value, of the firm of Adam Opel A. G. reserving to themselves the right of usufruct in these shares in case of need.

The undersigned, examined the deed of gift from the point of view of private law and has ascertained that a usufruct for the parents did not materialize because the provisions of article 1032 of the BGB (Code of Civil Law) have not been complied with.

The parties to the agreement intend to take action on the basis of this conclusion and to declare explicitly, in a supplement to be drawn up to the deed of gift, that the usufruct stipulations contained therein will be considered as void. By law such a declaration is not required, because it will not create any new rights, but simply declares the rights of all concerned as they already existed. However, in order to create a clear legal situation and to avoid controversies about hereditary rights, the undersigned has advised to declare once more formally, that the usufruct clause is considered void.

In the opinion of the undersigned the supplementary declaration will have no relevance to the foreign exchange regulations. However, in order to give the parties concerned a feeling of complete security, I have thought it advisable to submit the supplementary declaration to the Foreign Exchange Control Office for their information and approval.

In the interest of legal certainty I am therefore asking you on behalf of the parties concerned,

to issue a certificate to the effect, that the intended supplementary declaration does not violate any foreign exchange regulations.

A draft of the supplementary declaration as well as a copy of the deed of gift are enclosed.

(sgd.) Dr. Gaos
Attorney-at-law

(Translated from a photostaic copy of a copy of the German original)

Supplementary declaration to the deed of gift of October 5, 1931.

I, the undersigned Geheime Kommerzienrat Dr. ing. h. c. Wilhelm von Opel, and my wife Marta, nee Bade, intended by the above mentioned gift agreement to reserve for ourselves an in rem guaranty in case of need and believed, therefore, to have acquired a right of usufruct subject to a condition precedent by way of the usufruct provisions. However, an examination of the deed of gift has shown that under the rules of private law, the in rem guaranty we intended to secure for ourselves in case of need was not achieved at all, since the provisions of the law of personal and real property governing the establishment of a usu-

fruct were not complied with. For we neglected to conclude an agreement with our son to the effect that he reassign to us the claim of delivery of the shares to us, which claim we assigned to him for the purpose of having the title transferred to him. However, such an agreement would have been required to establish a valid right of usufruct. The legal examination has further shown that even if a valid right of usufruct had been established, it would have become void at any rate by the later sale of the shares.

In the meantime we have become convinced that a sufficient guaranty is afforded us by the legal provisions governing the obligation of support as well as by the legal provisions governing gifts, which provide that we have a claim against our son for the return of the shares in the event of our inability to support ourselves in accordance with our station in life.

In view of the foregoing we declare, also with a view to preclude any future dispute over the dispositions of our estates that we consider as void the provisions of the above mentioned deed of gift concerning the usufruct.

I, the undersigned Diplom-Ingenieur Fritz von Opel, have read the above and consent to its contents.

Plaintiff's Exhibit 98

Copy

Berlin, November 22, 1935

Re: Application of the undersigned to the Wiesbaden foreign exchange control office of October 8, 1935.

The gift agreement of October 5, 1935, starts by assigning title to the donated shares, with careful attention being

given to all the details required in such cases by the law of property. It then goes on to say that the usufruct of the shares shall not be assigned.

The question might arise in this connection whether the parents have not simply retained title to the usufruct, and whether the transfer of title has not been confined to a limited portion of the property.

The possibility of such a legal arrangement touches fundamental principles of the system of real property. Such an arrangement cannot, however, be brought into accord with the principles of the present German Civil Code, since usufruct, is not a quantitative part of the property, but a right sui generis. This has been established by the decisions of the courts (cf. KGJ.—decisions of the Berlin Kammergericht, Supreme Court of Appeal) edited by Johow—51st volume, page 291, and 43rd volume, page 229). Copy of the decision in the 51st volume of the KGJ is enclosed herewith.

(sgd.) Dr. Gnoss
Attorney-at-law

An die
Reichsstelle fuer Devisenbewirtschaftung,
attention Assessor Rentrop,
Berlin W 8, Behrenstr. 43.

(Translated from a photostatic copy of the German original.)

Copy

From the Jahrbuch fuer Entscheidungen des Kammergerichts

(Supreme Court Report of Court of Brandenburg)

Volume 51, page 291, No. 73.

No usufruct of a mortgage for the mortgagee.

A mortgagee cannot establish a usufruct of his own mortgage for himself. If he wants to retain the usufruct for himself when assigning the mortgage, then this can only be done by the new mortgagee who has to establish a usufruct for his predecessor.

Civil code of August 18, 1896 (Reich Law Gazette page 195) articles 1018 etc., 1069, 1154; Act concerning the Registration of Real Estate (Grundbuchordnung) of March 24, 1897/May 20, 1898 (Reich Law Gazette 1898, page 754) articles 19, 26.

Decision of April 11, 1918 (1, X. 55/18), Amtsgericht and Landgericht (Lower court and superior court) of *Stettin.* On July 30, 1917, Mrs. J. assigned to her daughter, by a deed drawn up by a notary public, a mortgage loan claim of RM 100,000.00 which was registered in her name, bue reserved to herself the "usufruct" of this claim. In this deed she simultaneously consented to, and applied for, the registration of the assignment and of the "reserved usufruct" in the land register.

She also declared that, because of the reserved usufruct, the mortgage deed would remain in her possession, and that the agreement regarding the usufruct was to serve as substitute for the conveyance. The land registry office objected to this application by means of an interim decision. The complaint of by Mrs. J. was not successful. A further complaint on her part was refused.

Arguments.

The previous mortgagee has consented to, and applied for, the registration of the assignment of the mortgage to her daughter, and the reservation of the usufruct for herself. The document of July 30, 1917, furthermore contains the declaration of assignment of the former mortgagee, and her declaration that she reserves the usufruct to herself. The land registry office with the consent of the court of appeal demands, that the document be supplemented, arguing that a usufruct is an independent right, which would have to be established by the new mortgagee, because the former mortgagee could not conclude a contract with herself. This opinion is correct. A usufruct (articles 1030 through 1089, Civil Code) in its relation to the object or right encumbered by it is an independent right (p. 2) (KGJ.—decisions of the Kammergericht*) (Supreme Court of Brandenburg) edited by Johow, vol. 43, page 229). Together with the real estate servitudes (articles 1018 to 1029) and the limited personal servitudes (articles 1090 through 1093) it belongs to those servitudes which are dealt with in book 3 section 5 of the Civil Code. The characteristics common to all servitudes are that the substance of the right is directed towards the use of a res of another person or the property of another person (cf. Tuhnau-Foerster, Liegenschaftsrecht (Real Estate Law) third edition, vol. 1 page 554; v. Staudinger, Civil Code, 7th and 8th editions, vol. 3 page 543; RGRaete—Commentary to the Civil Code by the Supreme Court Justice—second edition, article 1018, Note 1). According to these commentaries and in accordance with the principle that no person can conclude a contract with himself, the very concept of a servitude precludes the possibility that a

person could establish a servitude for himself in his own *res* or his own right (cf. KGJ 20 page A 297; RGZ—Reichsgerichts-Entscheidungen in Zivilsachen (Supreme Court Decisions in Civil Matters) 47 page 208; Guethe, GBO—Grundbuchordnung, (Act concerning the Registration of Real Estate) third edition vol. 2 page 1755, "Rights in one's own *Res*". It follows that a mortgagee cannot establish for himself a usufruct of his own mortgage. The legal situation is the same in case the mortgagee, simultaneously with establishing the usufruct for himself, assigns the mortgage to another person. Because in this case as well he wishes to establish for himself the usufruct of the mortgage which he still owns, i.e. establish for himself the usufruct of a right of his own. According to the above argumentation this is inadmissible (same arguments in Oberneck, GBR—Grundbuchrecht—Commentary, Law concerning the Registration of Real Estate, 4th edition, 1, page 680). The assumption, however, that the mortgage is being assigned without the right of usufruct, and that the former mortgagee would remain the owner of the right of usufruct, is contradicted by the consideration that a usufruct is by no means a quantitative part of the mortgage but according to the Civil Code, an independent right (KGJ vol. 43 page 229). Therefore, the intended reservation of the usufruct can only be obtained if the new mortgagee establishes the usufruct in favor of the former mortgagee. Likewise, the new mortgagee is the only person affected by the establishment of the usufruct in the sense of article 19 GBO. In the face of this the complainant is wrong in citing the decision of the Kammergericht quoted in OLG (decisions of the Oberlandesgericht) 12 page 287, as well as Planck, Commentary to the Civil Code, third edition, 1158 Note 2, and Predari, GBO, second edition, article 61, note 3, because it cannot be admitted that in these decisions and commentaries opinions were expressed which would contradict the above stated views. In view of

the special legal situation a different interpretation was placed on those cases only where it was not the former mortgagee who was to become the beneficiary of the usufruct, but in which simultaneously with the assignment the usufruct was to be established in favor of a third person (KGJ 40 page 277; see also 43 page 227). If in her second complaint the complainant alleges that according to the Civil Code a mortgage may be assigned under reservation of a right of usufruct, in the same way as according to Common Law, it could have been assigned deducto usufructu, then the question may be left open what the legal situation was according to Common Law. From the point of view of the law laid down in the Civil Code, which is the only law to be considered in the present case, the opinion of the lower courts alone can be recognized as correct.

To establish a usufruct of a bonded mortgage it is, according to articles 1069, 1154 of the Civil Code necessary that a declaration establishing it be made in writing and that the mortgage deed be delivered. The registration of the usufruct in the land register may take the place of the written declaration establishing it (article 1154, paragraph 2 Civil Code). In general, it is not for the judge in charge of the land register to examine whether or not the material prerequisites have been fulfilled. All he needs, therefore, apart from the presentation of the mortgage deed and, if necessary, the registration of the person establishing the usufruct is the approval of the registration by the person establishing it, whereby this approval, which has to be given in the form prescribed by article 29 GBO, is a matter of formal law (articles 19, 40, 42, 62 BGO; KGJ 40 page 277). In the present case of article 26 paragraph 2 GBO the material declaration concerning the establishment of the usufruct (p. 3) has already been granted recognition as a sufficient basis for the registration, in place of the approval of the registration (Decisions

of the Supreme Court published in [the periodical] "Recht" 1912 No. 1007; commentaries of the GBO: article 26 by Guethe, third edition, Note 7, 15; Arnheim, second edition, note 13; Predari, second edition, note 3). In the present case, the mortgage deed has been submitted to the land registry office. The new mortgagee shall be registered in the land register before the usufruct is registered. Therfore, what is still needed is the approval of the registration by the new mortgagee, which has to be given in the form prescribed by article 29 GBO, or der declaration concerning the establishment of the usufruct, to be made in the same form. The interim order, sustained by the Landgericht, which demands a "supplement" must therefore, in the light of the argumentation attached to it, be understood to mean that one of these two documents (approval of registration, or declaration concerning the establishment of the usufruct) still has to be submitted. In view of the above explanations, this demand is justified that to that extent no further complaint may be sustained.

Plaintiff's Exhibit 99

Dr. D. Gros
Attorney-at-law

Berlin-Columbushaus, February 8, 1936.
W 9, Potsdamer Platz 1

In reply to the decision of December 13, 1935, of the Regional Revenue Office, Kassel, Frankfort am Main branch, issued upon instructions from the Reich Office for Foreign Exchange Control, I beg to state the following:

I.

A. In the draft of the supplementary declaration and in the statements of the undersigned of October 8 and Novem-

ber 22, 1935, it was set forth that according to German law a valid usufruct had not been agreed upon.

Now, according to German law of conflicts the law of that country is applicable to the establishment of a usufruct in which the *res* in which the usufruct is to be created is physically located (lex rei sitae). Since the donated shares were deposited in the United States, the law of that country would have to be applied. However, the usufruct, as a legal institution, is unknown to American law.

But even assuming a valid usufruct as having been established, a waiver of the right of usufruct would not require a license under the terms of the foreign exchange control laws. There are no provisions in the foreign exchange laws which could be construed as a basis for the requirement of such a license. The usufruct as such is, in fact, outside the scope of the property rights to which the foreign exchange law applies (cf. article 6 paragraphs 1-5 and article 24 of the Foreign Exchange law). This is also justified by the nature of the matter because a usufruct, being an absolutely personal, inalienable and uninheritable right, is in direct contrast to the *negotiable* rights to which alone, according to its nature, the entire foreign exchange legislation and control can apply. The fact that monetary claims or any other of the rights enumerated in article 6 paragraphs 1-5 and article 24 of the Foreign Exchange law, might arise from a usufruct in favor of the beneficiary of the usufruct does not justify characterizing the usufruct, as such, as a right subject to foreign exchange laws (c.f. Hartenstein, appendix to article 14, page 140).

Now, there cannot be any doubt that a valid usufruct has not been agreed upon; for the requirement of publicity, indispensable for the validity of a usufruct, is lacking. However, by way of a liberal interpretation of the agreement, one might concede that the parents have an in personam claim to the subsequent establishment of a valid

usufruct. But such an in personam claim would at any rate not be subject to foreign exchange legislation, because it does not result in an *immediate* accrual of the legal benefits as in case of the usufruct; it does not even represent a future claim to such benefits, but merely an expectancy which is remote, and not definable by law or economics (p. 2).

B. As regards the substance of the "usufruct", this right was meant by the interested parties, right from the start, to become effective only if and when they should become unable to maintain a standard of living in keeping with their social station. It is true that this conditional character of the usufruct was not made as clear in the deed of gift as would have been desirable, but the intention of the parties to the agreement was from the very beginning directed towards that end and has been manifested ever since by their actual conduct both before and after the conclusion of the agreement.

For an intelligent interpretation of the agreement, one must not overlook the fact that the assumption of an unconditional usufruct would presuppose that the parties themselves intended to frustrate the agreement in an almost absurd fashion. Furthermore the following observation is in point:

The fact that the parties themselves did not aim at a usufruct to become effective immediately upon conclusion of the agreement is shown by the provision of paragraph 8 of the deed of gift that the advancement will be increased by the income not withdrawn; they would, on the other hand, not have neglected to include in the agreement a provision regarding the re-assignment of the claim to the shares delivered, if the possibility that the usufruct should become effective immediately had at all entered their minds. Finally, the conditional character of the usufruct is clearly proved by the report made on October 27, 1933, in com-

pliance with the Law concerning Treason to the People, this report reads as follows: "*Conditional* usufruct according to the provisions of the deed of gift of October 5, 1931."

II.

The facts are as follows:

As already reported to the branch office in Frankfurt am Main Mr. Fritz von Opel no longer owns the General Motors shares in question. In keeping with the tradition of his family, he invested his money in industrial enterprises. A specified list of the investments of Mr. Fritz von Opel was handed to the Reichsbankdirektorium at the conference of June 29, 1934. Reference may be made to this list. The enclosed complete statement of the attorney-at-law Mr. E. Meier of February 5, of this year shows the present status of Mr. Fritz von Opel's property and income.

III.

In the interests of legal certainty an authentic declaration of the applicable provisions of the foreign exchange control laws to the facts of the case is required. This certainty will be attained if the following determinations are made.

1. The parents have an in personam claim to the establishment of a usufruct subject to a condition precedent to become effective if and when they should become unable to maintain a standard of living in keeping with their social station

2. No foreign exchange license is needed to dispose of the claim mentioned under 1.

From a financial viewpoint, the parents are not in need of a subsequent establishment of a usufruct, subject to a

condition precedent, to become effective in case of need, since they are sufficiently secured, by law, by the provisions concerning the obligation of maintenance, as well as the regulations governing gifts, which provide that a donor may claim from the donee the restitution of the gift, in case he becomes unable to maintain out of his own means a standard of living in keeping with his social station. For these reasons the parents do not intend to assert their claim, if such an in personam claim exists, to a subsequent establishment of a usufruct, subject to a condition precedent, and to take steps against their son for its enforcement.

Should the National Office of Foreign Exchange Control intend to include in its decision a demand for another delivery of foreign exchange, the undersigned begs to point out now, that in view of the present financial position of Mr. Fritz von Opel only a very limited amount of foreign exchange could be delivered presently, since means for that purpose could not be made available without selling property assets at very great loss and since raising another loan would involve considerable difficulties and even considerable risks.

A copy of this letter was sent to the Branch office in Frankfort am Main.

(signed) Dr. Gros
Attorney-at-Law

An die Reichsstelle fuer
Devisenbewirtschaftung
(National Office for
Foreign Exchange Control)

Berlin W. 8,
Behrenstrasse 43

1912

Plaintiff's Exhibit 100

Dr. D. Gros
attorney-at-law

Berlin-Columbushaus, March 11, 1936
W 9, Potsdamer Platz 1,

Subject: Geheimrat Dr. Wilhelm von Opel.

In the deed of gift of October 5, 1931, a copy of which is enclosed, Geheimrat Dr. Wilhelm von Opel and his wife intended to reserve to themselves a security interest in the legal form of a right of usufruct, to become effective in the event that they themselves would at some time become financially distressed. All controlling parties were fully agreed when making the contract, that the usufruct was to be subject to a condition precedent and to become effective only in case the parents should become unable to maintain themselves in a standard of living in keeping with their social station. It is true that this conditional nature of the usufruct was not defined as precisely in the text of the deed of gift itself, as would have been desirable. But as mentioned already, the intention of the parties was directed to this and from the very beginning and this intention has been manifested by the actual conduct of the parties both during and after the conclusion of the agreement. The fact that contracting parties, when concluding the contract, in no way intended to create a usufruct to become effective immediately, appears from the provision of paragraph 8 of the deed of gift that the advancement was to be increased by the income not withdrawn. It is furthermore an indispensable prerequisite for the creation of a valid usufruct that the requirement of publicity as provided in section 1032 of the Civil Code has been fulfilled. The parties, however, would not have failed to agree on reassigning the claim to the deposited shares,

a claim that had originally been assigned for the purpose of transferring title, if they had at all contemplated making the usufruct effective immediately.

Finally, upon an intelligent interpretation of the contract it ought to be considered that an assumption of an unconditional usufruct would presuppose that the contracting parties themselves intended to defeat in a perfectly nonsensical manner, the very purpose for which the contract was concluded. And ultimately, the conditional character of the usufruct is proven unmistakably by the report of Geheimrat Wilhelm von Opel of October 27, 1933, made in compliance with the Law concerning Treason to the People, which reads as follows: "*Conditional* usufruct according to deed of gift of October 5, 1931."

But even this right of usufruct subject to condition precedent, intended by the contracting parties has not materialized. In the first place, as mentioned above, the indispensable prerequisite of publicity as required by section 1032 of the Civil Code was disregarded, i.e. the creation of a valid usufruct would have required an explicit agreement regarding the re-assignment of the claims to the deposited shares in lieu of delivery. On the other hand, the fact was overlooked that, according to the German law of conflicts, with respect to real and personal property, the law of the country where the res is found governs the creation of rights in that res (lex rei sitae). The donated stock, however, was deposited with a New York bank, so that the provisions of American law should have been applied. However, the usufruct is an institution unknown to American law.

Now, if the contract were to be construed liberally, one might be inclined (p. 3) to concede to the parents a in personam claim to a subsequent establishment of a usufruct subject to a condition precedent. However, economically speaking the parents are not in need of such a subsequent

establishment, in case of an emergency, of a usufruct subject to a condition precedent. Since the parents are sufficiently secured by law, by the provisions concerning the obligation of maintenance as well as the principles regarding gifts, which provide that a donor may claim from the donee the restitution of the gift in case he becomes unable to maintain from his own means a standard of living in keeping with his social station. For these reasons the parents do not intend to assert their in personam claim, if any such claim exists, to a subsequent establishment of a usufruct subject to a condition precedent or to take steps against their son in order to enforce it.

The remarks referring to the usufruct in the income and property tax return for 1934 of Geheimrat Dr. Wilhelm von Opel and his wife were vague and not made by an expert. Moreover, any remarks referring to the usufruct are irrelevant as far as taxation of income is concerned, and any reference to the foreign exchange law aspect of the question is misleading, since so far Geheimrat Dr. Wilhelm von Opel and his wife did not receive any income from the alleged usufruct. An explanation of these remarks is to be found in the fact that the foreign exchange law aspect of the question was being handled in a way which gave the parties concerned a certain legal uncertainty, which, in turn, induced them, as a precaution, to say rather more than was really necessary.

Therefore, as regards the property tax which would be the only one relevant in the case, I beg to point out that the in personam claim of the parents to the establishment of a right of usufruct, subject to a condition precedent, to become effective in case they would be unable to maintain a standard of living in keeping with their social station, does not represent any assets at the present time. This in personam claim is not subject to property taxation particularly since economically speaking, it is to all intents and

purposes identical with the maintenance claim already existing by virtue of the law.

In case any further information should be desired in addition to the above explanations the undersigned would ask to be instructed accordingly.

sgd. Dr. Gros
attorney-at-law

An das Finanzamt Wiesbaden,
Wiesbaden,
Herrngartenstr. 1-5

Plaintiff's Exhibit 101

Dr. Daniel Gros
Attorney-at-law
Berlin W 62
Budapester Str. 33

July 7, 1937

Herrn
Reichsbankdirektor Wilhelm

Berlin SW 11
Jaegerstrasse 34/36

Subject: Usufruct case von Opel.

Sir,

With reference to our conference of June 27 in the above matter I beg to inform you of the following:

I informed Mr. Fritz von Opel that you told me that your legal aides in charge of the usufruct case also denied that Geheimrat Dr. Wilhelm von Opel had a monetary claim

against Mr. Fritz von Opel and that, consequently, no legal obligation exists within the terms of the provisions of the foreign exchange law.

Furthermore I informed Mr. Fritz von Opel that, notwithstanding this legal situation, you are taking the view that for various reasons and because of the foreign exchange situation he is obliged to deliver foreign exchange.

Mr. Fritz von Opel stated in his reply that even after the legal situation had now been defined authoritatively he wished, now as before, to do his share in relieving the demand for foreign exchange, which is so particularly pressing at the present moment, by voluntarily offering foreign exchange, but that he would not be willing (p. 2) to recognize the existence of a special extra-legal obligation thereto.

I have now proposed to Mr. Fritz von Opel to do his share to ascertain in an unbiassed way his net income and his ability to pay, which in your opinion you could not do without. This could be done by giving a leading firm of chartered accountants to be designated by the Reichsbank (say Haskins & Sells, Price-Waterhouse, Deutche Treuhandgesellschaft) a chance to make a thorough audit.

As far as the scope of such an audit is concerned, I think its aim should be to ascertain whether the Overseas Finance Corporation, Zurich, 16 St. Peter Str. would have been in a position already in the past to pay to Mr. Fritz von Opel any dividends or interest, if its accounts had been correctly balanced and how much the Overseas could perhaps be expected to pay to him from their distributable net profits in the near future.

Should you wish to extend the audit to include the American companies which form part of the assets of the Overseas Finance Corporation, the Overseas will arrange, through its voting power in the meetings of the Board of Directors or of the stockholders, that the American com-

pany, charged by the Reichsbank with the audit, be enabled to carry out its audit.

Such an audit, it seems to me, would have to aim at ascertaining whether these companies accumulated any open or hidden reserves in excess of those amounts which are considered customary in their branch of business, whether their business situation is such, as to justify using part of their funds to pay a dividend (p. 3) to the Overseas Finance Corporation and, if this is the case, how the balance sheet of the Overseas Finance Corporation would be affected by such payments.

Heil Hitler!

Sincerely yours

(sgd.) Dr. Gros

Plaintiff's Exhibit 102

Decision of the
SWISS FEDERAL SUPREME COURT

Civil Bench of Oct. 8, 1935.

Rheinische Handelsgesellschaft

Defendant,

v.

A.-G. fur Immobilienwerte

Plaintiff.

Official Record Volume 61, Part 2, Page 245 of Die Praxis Des Bundesgerichts Volume 24, Page 453 No. 175

175: German Foreign Currency Regulations Shall Be Disregarded By The Swiss Courts.

The A.-G. fur Versicherungswerte in Zurich made a loan of R. M. 6000 to the Rheinischen Grundstucks-Handelsge-

sellschaft m.B.H. on April 15, 1931 for three years with 6% interest. On December 30, 1933 the claim has been assigned by the A.-G. für Versicherungswerte to the A.-G. fur Immobilienwerte in Zurich. The assignee notified the assignment to the defendant on April 12, 1934 and ordered her to pay back the loan on April 15, 1934. The Defendant referred in its answer of April 23rd to the German Foreign Currency Regulation and asked plaintiff to agree that payment should be made on an account of blocked credit marks Kredit-Sperrmark-Konto. The plaintiff refused this proposition in his letter of May 4, 1934. Plaintiff, A.-G. fur Immobilienwerte brought a lawsuit for upholding the attachment of defendant's property and a claim has been upheld by the Commercial Court of Zurich. The Swiss Federal Supreme Court confirmed the decision with the following arguments:

1. The court below declared in correspondence with the parties that German law is applicable for the loan and for the assignment. The debtor had his domicile in Germany and the transaction was made in marks. So it is in fact to be assumed that the parties in making a loan contract considered the applicability of German law or at least they would have considered the applicability of German law if they had thought to fix the applicable law. (See for instance, BGE 54 II 316 E. 2 = Pr 17 Nr 185; 60 II 300 f. E. 2 = Pr 23 Nr. 147). This is confirmed by the position taken by the parties in the process—the plaintiff has taken the position of the creditor—. On the other hand under the precedence of the Federal Supreme Court the validity of the assignment is controlled by the same law that controls the assigned claim. That mean in this case also the German law (BGE 18 S. 522; 23 I 142; 39 II 76 f. E. 4 = Pr 2 Nr. 92; 41 II 134 E. 1 = Pr. 4 Nr. 88). From that would follow that the case cannot be considered by the Swiss Federal Supreme Court (Articles 56 and 57 Statute on Federal

Procedure).[1] But the general applicability of the German law doesn't decide without further adieu if the Swiss Judge has really to apply this law. The question, if that is the case, is a problem of Swiss conflicts of law and has to be considered by the Swiss Federal Supreme Court (BGE 56 II 180 = Pr 19 Nr. 100).

2. From the beginning there is no discussion about the applicability of the rules of the German Civil Code because the defendant does not deny that under Section 607 of the German Civil it has become, by accepting the loan, the debtor of the A.-G. fur Versicherungswerte for an amount of R.M. 6000 and that the assignment of the claim to the plaintiff has been made in a correct way under Section 398 of the German Civil Code.

The defendant opposes to the claim indeed by reference to the German Foreign Currency Regulations and it says

a) that without a license of the German Devisenbewirtschaftungsstelle the assignment is void, and

b) that the performance of her duty as stipulated previously in the loan contract has become impossible and that therefore the duty to perform has been extinguished to this extent (§ 275 German Civil Code).

So the question mentioned before-hand arises, if the German Foreign Currency Regulations can be applied by a Swiss Judge; if the applicability of the German Foreign Currency Regulations is upheld the case is decided immediately for lack of a right to claim of the plaintiff, because the assignments were void under §15 of the German Foreign

1 These provisions limit the jurisdiction of the Swiss Federal Supreme Court to the application of Swiss Federal law. The Swiss Federal Supreme Court cannot investigate if foreign law has been applied in the correct way (By the Interpretor).

Currency law. That is the decision of the lower court and the Federal Supreme Court is bound by it (Federal Procedure Act, Sec. 57). On the other-hand if the applicability is denied the judgment of the lower court has to be confirmed without further adieu.

3. The lower court denied the applicability of the German Foreign Currency Statute in the first line, because this statute belongs to the public law and because public law of foreign state should be disregarded by a Swiss Judge. It must not be decided if that is correct, because in all events the applicability is excluded for the other reasons given by the plaintiff. The prohibition of payments of the German Foreign Currency law and the other restrictions about claims are interferences with creditor rights in order to spoil them (spoliativen Eingriff in die Glaubigerrechte) and these prohibitions are contrary to the basic velocity of the Swiss Regulation Order. From this follows that the German Foreign Currency Regulation cannot be taken into consideration by a Swiss Judge either directly insofar as has been the contents of a claim, nor indirectly insofar as they make the performance impossible. The Federal Supreme Court has already decided in this way, in his judgment of September 18, 1934, in the case Nathan-Institut A.-G. c. Schweiz, Bank fur Kapitalanlagen entschieden (BGE 60 II 310 = Pr 23 Nr. 147) and we can refer to the arguments given there.

4. The defendant must agree itself that its position is prejudiced to a large extent by Swiss case law and by the judgment named above. The defendant asks basically just for reconsideration of the rules as laid down in that judgment, by making reference to some specific circumstances of the case at bar, by referring to the Article 164 of the Swiss Code of Obligation and the Decision of the Swiss Federal Supreme Court in BGE 42 II 380 ff = Pr 5 Nr. 127

and 43 II 230 ff. E. 4 = Pr 6 Nr. 118, by referring to the clearing agreement made between Switzerland and Germany to the Swiss Foreign Currency Regulations and finally to decisions of the German Supreme Court and the Austrian Supreme Court.

a) As to the special circumstances of the case the defendant alleges that the plaintiff got the claim in a moment when the German Foreign Currency Regulations were yet in force for a long time, and defendant says furthermore that the plaintiff undoubtedly just paid the exchange rate for blocked marks which is 30-to-40%, but both allegations have nothing to do with the problem if the German Foreign Currency Regulations are in contradiction with the Swiss Public Order. In fact the defendant intends to allege that the plaintiff acts against good faith if it asks for payment of the full debt (that really was a problem of the Swiss Public Order but it works in the contrary discussion in favor of the defendant). This objective is immaterial. The plaintiff got the claim by the assignment with all its rights, and it can claim these rights in full without becoming liable for abuse of rights. It is not up to the debtor to investigate under what circumstances and for what price the assignee acquired the claim.

b) The defendant referred to Article 164 of the Swiss Code of Obligations to show the invalidity of the assignment. It says that "the statute", namely the German Foreign Currency Regulations, stands against the assignment but that is just a petitio principii that presupposes that the Swiss Judge has to apply the German Foreign Currency Regulations and that must be denied for the reasons given above.

The defendant is also wrong with his reference to BGE 42 II 380 ff. = Pr 5 Nr. 127 and 43 II 230 ff. = Pr 6 Nr. 118.

In these cases dealing with the sale of eggs and wheat the Swiss Federal Supreme Court assumed that there was impossibility of performance because of the German and Austrian export prohibitions during the (First) World War. But these cases differ from the case at bar just in the decisive point whereas the direct or indirect applicability of the German Foreign Currency Regulations undoubtedly are against the Swiss Public Order. It was obvious that restrictions as to the export of merchandise of countries in war do not come under this rule.

c) Defendant alleged that Switzerland recognized that the German Foreign Currency Regulations is not in conflict with the Swiss Public Order because Switzerland made a clearing agreement with Germany and established for itself foreign currency regulations but the court below shows quite correctly that Switzerland entered the clearing agreement because it was forced to do so by the German Foreign Currency Regulations. Switzerland had to try to mitigate the disasterous consequences of the German Foreign Currency Regulations by counter-measures and by treaties. By entering the clearing agreement and by establishing foreign currency regulations for itself—regulations that after all are just based on this agreement—Switzerland never declared that the German Foreign Currency Regulations were corresponding to the basic concepts of Swiss law. They tried indeed only to protect the Swiss standpoint as well as possible against the interferences of the German law.

d) The German Supreme Court stated in a judgment of January 29, 1935 (s. Juristische Wochenschrift 1935 S. Nr. 2) that under the rules of good faith a foreign creditor could not refuse to accept payments on a blocked account instead of performance and the Austrian Supreme Court decided accordingly in Decision of September 25, 1934 (s.

"Die Rechtsprechung", 16. Jahrgang S. 206 Nr. 253) in favor of a Hungarian debtor in respect to the foreign currency regulations of his country.

The decision of foreign courts cannot be decisive for the establishment of the meaning of the Swiss Public Order by a Swiss court besides the fact that these cases are in contradiction with earlier decisions of courts of the same states. This point shows clearly the national aspect in deciding this kind of cases. Furthermore the two decisions have been criticized by the editors of the law reviews that published these decisions, especially the editor of the "Rechtsprechung" said that the decision of the highest Austrian court was "completely wrong."

5. Under these circumstances the Federal Supreme Court has no reason to go away from the rules laid down in the previous decision 60 II 294 ff. = Pr. 23 Nr. 147.

As to the impossibility of performance it may be said furthermore that the defendant seems to have assets in Switzerland because the plaintiff attached them and so the defendant can fulfill its obligations. In this case there is obviously no impossibility of performance. There is just a problem if under the rules of good faith the defendant can be asked to pay back the loan because the German Foreign Currency statute (paragraph 42, fig. 3) provides heavy penalties for a debtor who makes payments without a license. But this problem is out of consideration because the defendant doesn't pay by its free volition but opposes to the payment so that plaintiff has to meet the payment by way of coercion; to-wit, by judgment of court.

1924

Plaintiff's Exhibit 103

PRINCIPALITY OF LIECHTENSTEIN.

No. 11

Stamp Reading:

Government of the Principality of Liechtenstein.

FAMILY CITIZENSHIP CERTIFICATE.

The undersigned Municipal Council herewith certifies that the Diploma Engineer Fritz von Opel, born in Russelheim, on May 4, 1899, and his wife, Margot von Opel nee Lowenstein, born in Potsdam on January 17, 1902, are citizens of the Liechtenstein Municipality of Planken and that they are at all times welcome as such in this Municipality.

The Mayor of Planken
December 22, 1939.

The Municipal Council of Planken
Principality of Liechtenstein.

Signed: JOHANN JEHLO,

Deputy Mayor.

The genuineness of the foregoing signature and of the affixed official seal are herewith certified to.

The Government of the Principality of Liechtenstein.

Vaduz, December 27, 1939.

Signed: Strassner.

Stamp reading:

Government of the Principality of Liechtenstein.

Plaintiff's Exhibit 104

Chancery of the Executive of
the Principality of Liechtenstein

STATEMENT

We confirm herewith that Mr. Fritz von Opel, born May 4, 1899 has been granted on November 10, 1939, the municipal citizenship of the Liechtenstein municipality Planken and that he has been accepted at the same time as a national of the State of Liechtenstein.

Vaduz, October 22, 1948.

The Princely Chancery,
Joseph Buchel

(SEAL)

(Legalization by the Consul of the United States of America at Zurich follows.)

Plaintiff's Exhibit 162

INVESTMENT

Transelanubia Bauxite A.G. Budapest

Current Account

		Swiss Francs	*(Dollars)*
November 4, 1935	Oberregierungsrat Fayer	10,000	($ 2,326.)
November 15, 1935	Oberregierungsrat Fayer	5,000	(1,163.)

1926

		Swiss Francs	
November 30, 1935	Oberregierungsrat Fayer	5,000	
December 31, 1937	Escompte and Wechslerbank	130,000 9,436.40	
		120,563.60	
May 3, 1936	Simon von Kraus	15,807.30	
September 16, 1938	Dr. S. Gyula	4,161.50	
December 6, 1938	Budai Takerchpergtay	2,364.50	
December 31, 1938	Report on shares Pengoes 90,000		74,750
December 31, 1938	Balance		84,146.90
		162,896.90	162,896.90

1939

January 1, 1939	Balance	84,146.90	
June 19, 1939	Dr. S. Gyula, Pengoes 10,000	5,306.50	
		89,453.40	
August 2, 1940	Dr. S. Gyula, Pengoes 15,000	12,906.60	
		102,360.00	
March 3, 1941	Dr. S. Gyula, Pengoes 10,000	7,558.50	
		109,918.50	

(Note of the Interpretor—The last column showing the amount in dollars is not in the original.)

1927

Plaintiff's Exhibit 163

SPUR DISTRIBUTING CO.
Incorporated
NASHVILLE, TENN.

On October
Twenty-fifth
Nineteen Forty-three

Mr. James Markham
Asst. Alien Property Custodian
Press Building
Washington, D. C.

Dear Mr. Markham:

My letter of explanation has, I understand, just been forwarded to you. The enclosure further reveals the serious situation which confronts Spur. Platt's Oilgram (enclosed) is the oil industry's chief news service, and has long been absolutely depended upon as reliable.

The indicated military demand, or anything near it, will certainly eliminate "A" and "B" coupons. It will incidentally close down the Spur Company. If we are to protect ourselves by arranging credits, action must be taken at once. I don't see how it could be done later.

The conversion of the A. P. C. stock into first mortgage bonds would certainly strengthen your position and would enable the American stockholders to save themselves.

We will be grateful if a decision can be arrived at upon this matter.

Sincerely,

/s/ MASON HOUGHLAND
President
SPUR DISTRIBUTING CO., INC.

JMH:L

Plaintiff's Exhibit 168

COPY

J. M. Houghland
President

H. D. Hines
Executive Vice President

SPUR DISTRIBUTING CO.
Incorporated
Nashville, Tenn.

November 5, 1944

Recd. by APC 12-7-44

Mr. W. D. Bradford, Assistant,
Office of Alien Property Custodian,
Washington, 25, D. C.

Dear Mr. Bradford:

Enclosed please find copy of minutes of special meeting of Board of Directors held on November 9th, 1944.

Also enclosed is October operating report.

Yours very truly,

SPUR DISTRIBUTING CO., INC.

By H. D. HINES (Signed)

HDH:EDF

COPY

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC.

NOVEMBER 9, 1944.

Pursuant to call by the President and written notice as required by the By-Laws, the Board of Directors of Spur Distributing Co., Inc. met in special meeting at the office of the Company at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, on Thursday, November 9, 1944, at 2:00 o'clock P.M. The following directors were present in person:

J. Mason Houghland
Paul M. Davis
H. D. Hines
Cecil Sims

J. Mason Houghland presided at the meeting as Chairman, and H. D. Hines acted as Secretary.

The written notice of the meeting was read by the Secretary and was ordered filed in the minute book immediately following the minutes of the meeting.

The President, J. Mason Houghland, stated to the Directors that the meeting had been called because the Company faces a most serious emergency growing out of the recent action of Uebersee Finanz-Korporation A.G. in instituting suit in the United States District Court at Washington, D. C., on October 25, 1944, the legal effect of which was to restrain and postpone the sale of the 73,000 shares of the Company's stock previously seized by the Alien Property Custodian on June 4, 1942, and advertised to be sold at public auction at 12:00 o'clock noon on Friday, October 27, 1944, at 120 Broadway, New York, N. Y.

It was the opinion of the directors that since the beginning of the war with Germany and the seizure of the above stock by the Alien Property Custodian as property belonging to an enemy alien, and the wide publicity given thereto, the Company had suffered great embarrassment and its activities had been impaired due to the general belief of the public that the Company was owned and controlled by German interests and the natural disinclination of American customers to do business with an enemy owned institution. The President pointed out to the directors that while all companies engaged in the marketing of gasoline and oil at retail had suffered considerably due to the emergency restrictions required by the war, the records of the Company disclose that Spur Distributing Co. has suffered more in proportion than its competitors due largely to the fact of the shadow of German ownership. He pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family, all of whom were German nationals and most of whom reside in Germany and have actively aided the German war efforts in the production of aircraft, tanks and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principle for military use.

Notwithstanding these facts the Company had hoped to endure the situation and to carry on its business under these handicaps as best it could with the hope that the contemplated action of the Alien Property Custodian, in offering the stock for sale at public auction, would bring about its purchase and ownership by American interests and thereby prevent any further embarrassment to the Company except for that naturally to be expected from the limitations of war restrictions.

However, in view of the fact that the contemplated sale was not permitted to take place and the very evident fact that Uebersee has decided to test out its rights by court litigation, the President stated he was advised that a final determination of the title to the stock and the consequent right of the Alien Property Custodian to sell and dispose of it might not reasonably be expected in less than two to three years due to the fact that the pending suit would undoubtedly be litigated and tried on its merits in the District Court, appealed to the Court of Appeals and then to the Supreme Court of the United States. Mr. Houghland stated he was informed that similar litigations arising during the first World War lasted for periods ranging anywhere from two to ten years, and that under these circumstances it now appeared that the Company was faced with doing business under the positive assertion in court of the foreign ownership of the majority of its stock and that in his opinion it was vital to its continued existence that the Board of Directors consider some immediate plan for relief.

In the general discussion that followed Mr. Hines pointed out the fact that out of the 250 retail stations operated by the Company only 39 stations were owned outright and that the remaining stations were under lease; that these leases were expiring continually and that the average life of the outstanding leases of these stations was approximately 2–7/10 years. He stated that the Company was having great difficulty in obtaining renewals of these leases due to the fact that the Competitors had urged upon the owners that they should not continue to lease their property to a company which was considered to be owned and controlled by German interests. Mr. Hines stated that from a practical standpoint it was difficult, if not impossible, to offset the effect of such arguments and that in his opinion unless prompt action was taken the company faced a gradual disintegration so far as the future renewals of leases was concerned.

Mr. Houghland recommended that the directors consider the advisability of attempting to purchase outright as many of the leased properties as possible as one means of offsetting the difficulty of the Company in obtaining renewals. But Mr. Davis pointed out that this would require a large investment at a small return and would seriously deplete the cash resources of the Company.

Mr. Houghland suggested that it might be advisable for the Company to issue and sell additional stock in order to provide funds for acquisition and expansion purposes.

Mr. Sims suggested that the Alien Property Custodian might consider any sale of additional stock at less than book value as detrimental to his holdings and that consideration should be given to the position of the Alien Property Custodian. Mr. Sims further pointed out that of course a sale of additional stock at book value would be beneficial to the holdings of the Alien Property Custodian as well as to all other stockholders and that in his opinion, if additional stock was to be sold, every effort should be made to sell it at not less than book value if it was possible to do so.

Mr. Hines stated that while he agreed that the issuance and sale of additional common stock would be beneficial to the Company and would tend to preserve the value of the Company's outstanding stock, he questioned whether or not under present circumstances such stock could be readily sold for a sum equal to book value particularly in view of the fact that recently the stock had been sold at a price which was approximately one-half of book value.

Mr. Houghland stated that while he recognized the difficulties which would be encountered in disposing of additional stock at book value he felt that the effort should be made even though it might develop after investigation that it would be impossible to find a purchaser at this price.

RESOLVED by the Board of Directors that it is the unanimous opinion of the Directors that the future welfare of the corporation requires the issuance and sale of additional stock in such amount and for such consideration as may hereafter be determined by the Board of Directors, but that such stock should be sold for cash and for not less than book value, and J. Mason Houghland, as President of the Company, is authorized and directed to take up negotiations, for the issuance and sale of such stock and to submit the best proposition obtained back to the Board of Directors for final action.

There being no further business, the meeting adjourned.

.....
Chairman

Plaintiff's Exhibit 169

J. M. Houghland
President

H. D. Hines
Executive Vice President

SPUR DISTRIBUTING CO.
NASHVILLE, TENN.

November 6, 1944

Mr. W. D. Bradford, Assistant,
Office of Alien Property Custodian,
Washington, 25, D. C.

Dear Mr. Bradford:

Enclosed please find copy of Minutes of Special Meeting of Board of Directors, held on December 2nd, 1944.

Yours very truly,

SPUR DISTRIBUTING CO., INC.

By /s/ H. D. HINES

HDH:EDF

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC. DECEMBER 2, 1944.

Pursuant to call by the President and written notice as required by the By-Laws, the Board of Directors of Spur Distributing Co., Inc. met in special meeting at the office of the Company at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, on Saturday, December 2, 1944, at 10:00 o'clock A. M. The following directors were present in person:

J. Mason Houghland
Paul M. Davis
H. D. Hines
Cecil Sims

J. Mason Houghland presided at the meeting as Chairman, and H. D. Hines acted as Secretary.

The Secretary read the notice of the special meeting, which was as follows:

NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF SPUR DISTRIBUTING CO., INC.

You are hereby notified that a special meeting of the Board of Directors of Spur Distributing Co., Inc., will be held at the offices of the Company, at Eighth Avenue and Bradford Avenue, Nashville, Tennessee, at 10:00 o'clock A. M., on the 2nd day of December, 1944, for the following purposes:

(1) To consider and act upon the issuance and sale of Twenty Thousand (20,000) shares of Common Stock for cash at not less than book value with options to purchase an additional Fifty Thousand (50,000) shares of Common Stock for the same consideration, for the

purpose of securing additional working capital for the corporation.

(2) To consider and act upon the discontinuance of the services of the corporate Transfer Agent and the corporate Registrar, and amending Article V of the By-Laws by repealing such provisions thereof as require the stock of the corporation to be transferred by a Transfer Agent and registered by a Registrar, so as to permit the corporation, in the interest of economy, to perform such services on its own behalf.

(3) For the transaction of any other business which may lawfully come before said meeting.

This the 25th day of November, 1944.

A. E. Peterson, Secretary

The Secretary was ordered to file a copy of such notice with certification of mailing at the conclusion of these minutes.

Mr. Houghland stated to the directors that he had received a telegram from Mr. James E. Markham, Alien Property Custodian, who had requested him to read the telegram to the directors. He did so and it was ordered spread upon the minutes, and is as follows:

WA323 60 GOVT—WASHINGTON DC 30 1052A
MASON HOUGHLAND—
CARE SPUR DISTRIBUTING CO.—NASHVILLE

With reference to Agenda on Directors (meeting scheduled December Second, pursuant to authority vested in me you are advised that no action in respect to issuing stock will become effective without approval of Custodian and possibly the Court. You are further

requested to read this telegram at the meeting and forward to this office copy of minutes of Directors' Meeting.

James E. Markham, Alien Property Custodian

Mr. Houghland stated to the directors that pursuant to the instructions of the Board, as set out in the minutes of the special meeting held on November 9, 1944, he had carried on certain negotiations relating to the issuance and sale of additional shares of the Company's stock for the purpose of securing additional working capital for the corporation and that the best proposition which he had been able to obtain was from Equitable Securities Corporation, of Nashville, Tennessee, which proposed to purchase 20,000 shares of the Company's Common Stock at book value as of October 31, 1944, which was $13.37 per share, provided the Company granted an option to Equitable Securities Corporation to purchase all or any part of an additional 50,000 shares of the Common Stock at the same price, such option to continue through December 31, 1949. The President stated that the terms and conditions of such proposed purchase had been set out in a written contract and the same was read and is as follows:

THIS AGREEMENT, entered into on this 2nd, day of December, 1944, by and between SPUR DISTRIBUTING CO., INC., a Delaware corporation with its principal office in Davidson County, Tennessee, hereinafter called "Seller", and EQUITABLE SECURITIES CORPORATION, a Tennessee corporation with its principal office in Nashville, Tennessee, hereinafter called "Buyer".

WITNESSETH:

WHEREAS, the Seller represents that it is validly organized and existing under the laws of the State of Delaware, and is authorized to issue Four Hundred Thousand (400,000) shares of Common Stock without par value, of

which there is presently outstanding and issued a total of One Hundred Forty Thousand (140,000) shares, One Thousand (1,000) of which outstanding shares are held by the Seller as Treasury Stock; and

WHEREAS, the Seller represents that its balance sheet annexed hereto, marked Exhibit "A" and made a part hereof, clearly sets forth its financial position as of the 31st day of October, 1944, and that there has been no material change in the position of the Seller's business and assets since said date; and

WHEREAS, the Seller desires to secure additional working capital through the sale of additional stock;

NOW THEREFORE, in consideration of the premises and the mutual covenants and undertakings herein set out, the parties hereto agree, as follows:

FIRST: Seller agrees that it will issue and sell, and the Buyer agrees that it will purchase and pay for, Twenty Thousand (20,000) shares of Common Stock of the Seller for a consideration of Thirteen Dollars and Thirty-seven Cents ($13.37) per share, representing the book value of said stock as of the 31st day of October, 1944. Said shares of stock shall be issued to the Buyer or in the name of its nominee and shall be delivered to the Buyer upon payment of the purchase price to the Seller.

SECOND: In consideration of the foregoing purchase of said Twenty Thousand (20,000) shares of Seller's Common Stock, Seller hereby grants to the Buyer an option to purchase all or any part of an additional Fifty Thousand (50,000) shares of the Seller's Common Stock at the price of Thirteen Dollars and Thirty-seven Cents ($13.37) per share, which option shall continue for a period of five (5) years and one month from the date hereof and shall terminate at midnight on the 31st day of December,

1949. Seller further agrees that it will upon demand of the Buyer deliver to the Buyer non-negotiable option warrants in such denominations as the Buyer may request, to evidence the option herein granted; such option warrants to be in form satisfactory to Seller and Buyer.

THIRD: Seller hereby agrees that it will forthwith deposit with THE AMERICAN NATIONAL BANK OF NASHVILLE, as Escrow Depository, in street delivery form, certificates for Fifty Thousand (50,000) shares of its Common Stock, said certificates to be in such number and in such amounts of stock as may be designated by the Buyer, with written instructions to said Escrow Depository in form satisfactory to the Buyer instructing and directing the said Escrow Depository to deliver to the Buyer during the option period any or all of said shares of stock upon the payment to the said Escrow Depository for Seller's account the aforesaid consideration of Thirteen Dollars and Thirty-Seven Cents ($13.37) per share.

In the event the Buyer shall fail to exercise its option to purchase with respect to all or any part of said shares of stock, said Escrow Depository shall, upon the termination of the option period, return such shares of stock as then remain in its hands to the Seller.

FOURTH: The Seller covenants that so long as the option granted to the Buyer is outstanding it will not declare any stock dividends, issue to its stockholders or others any rights to subscribe for shares of its stock, or change its capitalization without the consent of Buyer.

FIFTH: Seller agrees that during the option period for the purchase of additional stock by the Buyer as hereinbefore set out, no additional stock will be issued and sold by the Seller without first giving to the Buyer a thirty-day option to purchase its proportionate part of said new issue of stock, computed on the basis of both the stock herein purchased and optioned, upon the

SIXTH: Seller agrees to furnish a statement to Buyer certifying that the stock hereinabove described has not been offered to other purchasers, and Buyer agrees to furnish Seller with a statement certifying that it is purchasing said shares of stock for investment and not for resale or for the purpose of offering the same generally to the public. Seller further agrees to furnish to Buyer written opinion of Seller's attorneys, Messrs. Bass, Berry & Sims, of Nashville, Tennessee, certifying that said proposed issue, sale and option of said stock as herein set out is legal and authorized and that the terms, provisions and conditions of this contract have been legally adopted and approved by Seller through proper corporate action.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals hereunto through their duly authorized officers, on the day and year first above written.

SPUR DISTRIBUTING CO., INC.,

By J. M. Houghland
President

Attest:

ALVER E. PETERSON
Secretary

EQUITABLE SECURITIES CORPORATION,

By BROWNLEE O. CURRY
President

Attest:

GEO. N. BULLARD
Secretary

The proposal as set out in the foregoing contract was discussed by all of the directors present at great length and in detail, and after such discussion it was unanimously:

RESOLVED, that the corporation issue and sell 20,000 shares of its Common Stock to Equitable Securities Corporation, of Nashville, Tennessee, for the consideration of $13.37 per share, for the purpose of securing additional working capital for the corporation, with the option of purchasing all or any part of an additional 50,000 shares of the Common Stock for the same consideration in accordance with the terms, provisions and conditions set out and contained in the proposed written contract, said additional 50,000 shares of the Common Stock to be issued in street form and deposited with The American National Bank of Nashville as Escrow Depository, subject to the exercise of the purchase option as set out in said contract; and

RESOLVED, that said offer of purchase made by Equitable Securities Corporation as set out in said contract, and all of the terms, provisions and conditions thereof, be and the same hereby is accepted and approved, and the President and Secretary of the corporation are authorized to execute said contract on behalf of the corporation and to take any and all steps as may be necessary and required to fully carry out the terms and provisions thereof.

The President then presented to the directors the option warrant required to be executed by the Company in the contract and the same was read to the directors, and on motion was unanimously approved and was ordered to be spread upon the minutes of the meeting, and was as follows:

1941

WARRANT

for

Subscription to Capital Stock

of

SPUR DISTRIBUTING CO., INC.

Incorporated under the Laws
of the State of Delaware.

This is to certify that the Bearer hereof is entitled to subscribe, in accordance with the provisions herein contained and subject to the limitation hereinafter set forth, to Fifty Thousand (50,000) Shares, or any part thereof, of the Common Capital Stock of SPUR DISTRIBUTING CO., INC. as constituted on the date of subscription at Thirteen Dollars and Thirty-Seven Cents ($13.37) per share at any time after the date hereof and on or before December 31, 1949. This Warrant, if not exercised, shall be void after December 31, 1949.

Such subscription may be exercised only by the surrender of this Warrant with the form of subscription which appears on the reverse hereof duly filled out and signed at the principal office of The American National Bank of Nashville, Escrow Depository, in Nashville, Tennessee, together with cash or current funds in payment of such subscription.

The title to this Warrant and all rights and interests represented hereby may be transferred and assigned by delivery merely in the same manner as a negotiable instrument payable to Bearer and the Company and its agents may treat the Bearer hereof as the rightful owner for all purposes, without inquiry as to the sources of title, provided however such transfer shall be subject to the terms and provisions of that certain agreement between the

Company and Equitable Securities Corporation dated December 2nd, 1944, and hereinafter referred to.

This Warrant is isued by the Company pursuant to an agreement dated December 2, 1944, between the Company and Equitable Securities Corporation, a copy of which agreement is on file in the principal office of the Company at Nashville, Tennessee, and may be inspected by the Bearer of this Warrant. The Company covenants that so long as this Warrant is outstanding it will not declare any stock dividends, issue to its stockholders or others any rights to subscribe to shares of its stock, or change its capitalization without the consent of Equitable Securities Corporation. No additional stock will be issued and sold by the Company prior to January 1, 1950, without first giving Bearer a thirty (30) day option to purchase all or any part of a proportionate part of the proposed new issue of stock computed on the basis of the stock then outstanding and the stock purchasable under this Warrant, upon the same prices, terms and conditions upon which such proposed stock is to be offered and sold.

As and when purchases of stock shall be made, the amount of which purchase shall be endorsed hereon by a suitable legend signed by an authorized officer or agent of the Company. This Warrant may be surrendered to the Company to be exchanged for similar Warrants in different denominations but for the same aggregate number of shares issuable thereunder as of the time of exchange.

This is the 2nd day of December, 1944.

SPUR DISTRIBUTING CO., INC.

By .....
President

The President then called the directors' attention to the fact that as presently constituted the By-Laws of the Company under Article V contain provisions authorizing the directors to appoint transfer agents and registrars

for the Company in the City of New York and elsewhere for the transfer and registration of the stock of the Company. He pointed out that pursuant to this authority the Company had previously appointed Chemical Bank & Trust Company as Transfer Agent and Bank of New York and Trust Company as Registrar in the City of New York and that such action required the corporation to pay a State transfer tax in addition to the Federal transfer tax on all shares of the Company's stock which were transferred by this means and also involved additional payments for the services of the Transfer Agent and the Registrar. The President stated that it had been suggested in the interest of economy that the corporation should discontinue the services of the Transfer Agent and the Registrar and should hereafter cause its stock to be issued direct by its officers at the home office of the Company in Nashville, Tennessee, thereby saving the New York transfer tax and the amount paid to the Transfer Agent and Registrar for their services. After a discussion of the matter it was unanimously:

RESOLVED, that Section 4 of Article V of the By-Laws of the corporation be and same hereby is repealed; and further

RESOLVED, that the services of Chemical Bank & Trust Company as Transfer Agent, and the services of Bank of New York & Trust Company as Registrar, in the City of New York be and the same are hereby discontinued, and the Secretary is instructed to notify said Transfer Agent and Registrar accordingly and to request them to return to the Company all certificates of stock, stock registers and other records of the Company, and to express to them the appreciation of the corporation for the services rendered to the corporation.